

*What Every Member of the
Trade Community Should Know About:*

Waste & Scrap as it Relates to Base Metals of Chapter 81



AN INFORMED COMPLIANCE PUBLICATION

MARCH 2004

U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

Publication History

First Publication June 1998
Revised March 2004

PRINTING NOTE:

This publication was designed for electronic distribution via the CBP website (<http://www.cbp.gov>) and is being distributed in a variety of formats. It was originally set up in Microsoft Word97®. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.

PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, is a study of the classification of waste and scrap as it relates to base metals of Chapter 81. “Waste & Scrap as it Relates to Base Metals of Chapter 81” provides guidance regarding the classification of imported merchandise. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Michael T. Schmitz,
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Office of Regulations and Rulings

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INTRODUCTION

Chapter 81 of the Harmonized Tariff Schedule of the United States (HTSUS) covers the base metals not covered by the preceding chapters of Section XV (chapters 72-80), cermets (bonded mixtures of ceramic material and metal), and articles thereof. The base metals covered by chapter 81 are tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium, and thallium.

Waste and scrap of the base metals of chapter 81, except for tungsten, are free of duty (if entitled to column 1 treatment). The term “waste and scrap” has taken on various meanings. Webster’s II New Riverside University Dictionary defines “waste” as “a worthless or useless by-product.” The American Society for Metals Handbook (8th Edition) defines “scrap” as a “defective product not suitable for sale. Discarded metallic material from whatever source that may be reclaimed through melting or refining.” In HQ 555096 (July 7, 1989), the two types of scrap acquired and processed by scrap yards into commercial scrap were described by the protestant as “obsolete scrap (worn-out or discarded metal articles) and industrial scrap (leftover material from manufacturing operations performed on metal articles.” However, *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146, 153 (1990), noted that “[i]t is not enough that an article be called a tariff term in the trade vernacular. There must be a showing that the article embodies the salient characteristics of the tariff term claimed.”

This document will discuss which “salient characteristics” Customs believes must be present in order for a product to be classified as waste or scrap, the application of Note 8(a) to Section XV, and the application of the Harmonized Commodity Description and Coding System Explanatory Notes (EN’s) to heading 7204.

GENERAL OVERVIEW

With respect to the base metals and articles covered by Section XV, the definition for waste and scrap is provided by Note 8(a) to Section XV as “[m]etal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.” Except for tungsten (wolfram), molybdenum, and magnesium (the EN’s for which headings contain additional guidance for identifying the waste and scrap of those headings, as further explained below), this is the only definition provided by the HTSUS to guide us in making a waste or scrap determination under chapter 81.

Note 8(a) refers to fragments of stock such as shavings, grinding, chips, and similar insignificantly-sized pieces which result from a manufacture or mechanical working operation. It also covers worn-out or broken metal articles no longer usable as such. If the imported article continues to conform to a recognized commercial specification, then it would be “usable as such” and would not fit the waste and scrap

definition of Note 8(a). Similarly, if the result of a manufacture or mechanical working operation is a product which has the “salient characteristics” of another tariff term, such as “powder” or “unwrought,” then it would not be considered waste or scrap. Note 8(a) does not cover any product which has been melted or cast into ingots, blocks, etc., even if it previously consisted of materials (e.g., shavings or grindings) which would have been considered scrap. Such articles are considered to be “unwrought” and are to be classified as such (see Additional U.S. Note 1 to Section XV).

The Explanatory Notes (EN's) for headings 8101 (tungsten (wolfram)), 8102 (molybdenum), and 8104 (magnesium) refer to the description of waste and scrap provided by the EN's for heading 7204 (ferrous waste and scrap). The EN's for heading 7204 refer to the definition of waste and scrap provided by Note 8(a) to Section XV and describe the forms the waste and scrap covered by that heading generally take, including crop ends, filings, turnings, and similar residue from the manufacture or mechanical working of iron or steel. In the case of end portions, the EN's provide no dimensional limitations for classification as waste or scrap, but it is clear that the end portions so classified cannot be those which would fit another tariff description (i.e., have the “salient characteristics” of another tariff description). The EN's for heading 7204 also provide that the waste and scrap of that heading do not include “articles which, with or without repair or renovation, can be re-used for their former purposes or can be adapted for other uses.” Also excluded as waste and scrap are articles which “can be refashioned into other goods without first being recovered as metal.” Again, if the imported article conforms to an industry standard or meets a recognized commercial standard, it could not be classified as waste or scrap. Only if the article must first be remelted or subjected to chemical or similar processes in order to prepare or separate its metal properties for subsequent use would it be considered waste or scrap.

The EN's for heading 8104 (magnesium) also specify that, with respect to raspings, turnings, or granules of magnesium, such articles will only be considered waste or scrap if they have not been graded or sorted according to size. When such articles have been graded or sorted according to size, they are classified under the 8104 subheading specifically referring to such articles.

To recap, no ingots, pigs, or other cast forms will be considered waste or scrap under chapter 81, HTSUS. To be considered waste or scrap, an article must be the by-product of a manufacture or mechanical working of the metal, or a defective article which is worn, broken, or cut-up and is not able to be repaired, renovated, or adapted to other uses without first having its metal properties recaptured. In the case of magnesium, the by-product raspings, turnings, or granules cannot be graded or sorted according to size.

QUESTIONS TO ASK

1. How was this scrap obtained?
 - Is it a product derived from the manufacture or mechanical workings of the metal which in its imported condition:
 - cannot be used for its intended purpose or metal properties?
 - does not meet any other tariff definition other than waste and scrap?
 - Is the imported product recognizable as a worn out or broken article of metal definitely not usable as such because of breakage, cutting-up, wear or other reasons, which would only fit the waste and scrap tariff definition?
2. Does the imported product need to be melted down in order to eliminate the impurities or to capture its metal properties before it can be utilized within a manufacturing process?
3. Does the imported product meet the scrap standard specifications of the Institute of Scrap Recycling Industries, Inc., 1325 G Street, N.W., Suite 1000, Washington, DC 20005 (202-737-1770)?
4. Is the imported product in ingot or other cast form?
5. Does the imported product conform to an industry standard or specification for the particular metal?
6. Does the imported product meet another tariff definition such as an unwrought product or cermet?

A yes answer to 1, 2 and/or 3 would indicate the product most likely would be properly classified as waste and scrap. A yes answer to 4, 5 and/or 6 would most likely eliminate the product from being classified as waste and scrap of base metal within chapter 81.

CONCLUSION

If the imported product is manufactured to a standard or is of high purity, it would be very unlikely that it would meet the “salient characteristics” of waste and scrap. An ingot or other similar unwrought form cast from remelt waste and scrap, would not be eligible for classification as waste and/or scrap within chapter 81. If the shipment, however, consists of fragments of stock, removed during manufacturing or mechanical working of the metal or the shipment consists of various broken, cut-up or worn out articles of base metal, and the metal is not usable as such, the merchandise would have taken on the “salient characteristics” of waste and scrap.

It is important to exercise reasonable care when classifying imported products. If there is ever any question as to whether the product will meet the “salient characteristics” of waste and scrap, a U.S. Customs and Border Protection office can be contacted to discuss the matter. To receive a written response to classification questions, follow the guidelines of Part 177 of the Customs Regulations for a binding ruling and submit the request to The Bureau of Customs and Border Protection, Customs Information and Exchange, 10th Floor, One Penn Plaza, New York, NY 10119.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>